IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 4763-2015
Date of decision:-20.02.2020

National Insurance Co. Ltd. .....Petitioner

vs.

Pooja and ors. ....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr. Sandeep Suri, Advocate
for the petitioner.

Mr. Ajay Shekhawat, Advocate
for respondent Nos. 1 and 2.

RITU BAHRI, J.(Oral)

The present petition is for issuance of writ in the nature of certiorari seeking quashing of award dated 12.12.2013 passed by respondent No. 3.

Brief facts of the case are that respondent No. 1 and 2 filed a petition against the petitioner-Insurance Company before the Permanent Lok Adalat for Public Utility Services, Rohtak seeking compensation amounting to Rs.1,00,000/- on account of death of Parveen, who died in road accident, which occurred on 21.02.2011. The award was allowed and claimants were held entitled for compensation of Rs.1,00,000/-.

Learned counsel for the petitioner is challenging the impugned order on the ground that the risk of the deceased was not covered at all, as per the terms and conditions of the Insurance Policy. The motorcycle was registered in the name of Ved Prakash (father of the deceased) and the policy of insurance was also taken by Ved Prakash. Therefore, the compulsory personal accident cover was granted only with respect to Ved

Prakash.

Learned counsel for the petitioner has argued that respondent No. 3 had wrongly relied upon judgment of this Court in a case of ***National Insurance Co. Ltd vs. Umesh Kumari and others,*** wherein it has been held that the son of owner cannot be treated as third party. He has to be termed as owner itself as he has stepped into the shoes of owner by borrowing vehicle with permission of owner.

Learned counsel for the petitioner is relying upon judgment of this Court in a case of ***M/s Reliance General Insurance Co. v. Ranjit and another, passed in FAO No. 6704-2011, decided on 24.03.2015*** wherein similar issue came up for consideration and this Court held that the payment on account of personal accident claim can be given to the person duly covered under the policy and not to anybody else including brother of the person covered under such a policy.

Heard learned counsel for the parties.

Reference at this stage can further be made to ***FAO No. 5947-2012 titled as National Insurance Co. Ltd vs. Hari Mohan and anr, decided on 24.10.2016*** wherein this Court examined the judgment of Umesh Kumari and allowed the appeal filed by the Insurance company and it has been observed that as per the provisions of the General Regulation No. 36, the personal accident cover is available only to the registered owner in person where he/she hold an effective driving licence. The reference to the owner-driver mentioned in the aforesaid regulation must be understood as owner who is capable of driving and who was driving the vehicle at the relevant time. It cannot be understood as owner of driver. Thus, the person who is not the registered owner of the vehicle is not covered for personal accident cover. Reference has been made to a judgment of this Court in ***Bajaj Allianz General Insurance Co. Ltd vs. Jagdish Singh and others passed in FAO No. 1773-2010 decided on 09.12.2010*** wherein after relying on ***Nigamma's case (supra)*** has taken the view contrary to the view taken in ***Umesh Kumari case (supra).*** It has been held that the personal accident cover is only for the owner/driver named in the policy and it cannot extend to any other person. The contract of insurance is a specie of the law of contract and the Insurance Company is entitled to enforce its term. The borrower of the vehicle is not covered even under personal accident cover.

Learned counsel for the respondent has not been able to cite any law contrary to the above.

In the above circumstances, it is clear that borrower cannot get the benefit of personal accident claim, which is restricted to the registered owner-driver.

The writ petition is allowed and award dated 12.12.2013 passed by respondent No. 3 is set aside.

(RITU BAHRI)
JUDGE

20.02.2020
G Arora

Whether speaking/reasoned : Yes
Whether reportable : No